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No. 91-391

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1990

ANDREW E. KARIM,

Petitioner,

v.

NANCY ELLAN BOYER,

Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Tenth Circuit

PETITIONER'S REPLY TO BRIEF IN OPPOSITION

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Respondent has presented a slanted, if not misleading, version of the facts. In her attack upon the due process issues raised by the petition in connection with the imposition of sanctions under Bankruptcy Rule 9011, Petitioner, for example, is said to have had "notice" of the bankruptcy judge's intent to impose sanctions since September 20, 1988. The hearing during which sanctions were actually levied took place on May 5, 1989. *If* an idle threat made nearly eight months earlier with *no basis in fact* and having *no legal or factual connection with the May 5 hearing* constitutes "notice" in the due process sense, then yes, this Petitioner had notice. While the record supports the presence of these very circumstances, Petitioner urges that the law should not sustain Respondent's conclusion.

Respondent's link between hostile statements made to the Petitioner by the bankruptcy judge in 1988 and those made to the former several months later in 1989 is imaginary. Even assuming, *arguendo*, that such a link exists, the questions raised by the petition would not change. The due process issue in particular, which encompasses the opportunity to be heard as well as notice, remains a viable subject of national interest. See Reske, *A Kinder, Gentler Rule 11*, ABA Journal, August 1991 at 25 (Advisory Committee on Civil Rules adopted proposal for amending Rule 11 to prohibit surprise imposition of sanctions). Moreover, conflict still exists between circuits regarding what kind of due process must be afforded one who is accused of violating Rule 11 (or Bankruptcy Rule 9011). See Cole, *Rule 11 Now*, Litigation 10 at 50-51 (Spr. 1991).

Respondent's claim to victory is founded upon the notion that the bankruptcy proceedings, in which Petitioner represented the debtor, were merely a "re-litigation" of the divorce between Respondent and debtor. *Nothing is further from the truth.* This Petitioner is guilty of no misconduct whatsoever. The record will prove that the accusations which were thrown at him in bankruptcy court and blindly propagated by the appellate courts are purely fictional. *Fictio cedit veritati. Fictio juris non est ubi veritas.*

Respectfully submitted,

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